



APPROVED

**BOARD OF ADJUSTMENT
CITY OF SCOTTSDALE
3939 NORTH DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA
SEPTEMBER 7, 2005**

REGULAR MEETING MINUTES

PRESENT: Terry Kuhstoss, Chairman
Carol Perica, Vice-Chairman
Jennifer Goralski, Board Member
Ernest Jones, Board Member
Howard Myers, Board Member
James Vail, Board Member
Neal Waldman, Board Member

STAFF PRESENT: Tim Curtis
Kroy Ekblaw
Randy Grant
Sherry Scott
Greg Williams

1 CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chairman Kuhstoss at 6:04 p.m.

2 ROLL CALL

A formal roll call confirmed members present as stated above.

AMENDMENT TO RULES

BOARD MEMBER VAIL MADE A MOTION TO AMEND RULE 201 OF THE RULES OF PROCEDURE PERTAINING TO THE FIRST WEDNESDAY OF THE MONTH WHEN MEETINGS ARE TO BE HELD. THE MOTION WAS SECONDED BY BOARD MEMBER GORALSKI, WHICH PASSED UNANIMOUSLY WITH A VOTE OF 7 (SEVEN) TO 0 (ZERO).

APPROVAL OF MINUTES

August 3, 2005 Board of Adjustment Study Session Minutes

BOARD MEMBER VAIL MOVED TO APPROVE THE MINUTES AS SUBMITTED, SECONDED BY BOARD MEMBER MYERS. THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

August 3, 2005 Board of Adjustment Minutes

Board Member Myers requested that additional details be included in the minutes reporting the discussion on 6-BA-2005 Berkley. He noted the omission of some key facts from the minutes. He would also like to verify that staff had recommended approval of the request.

The salient points that were left out were:

The applicant was living in the space for about five years without a certificate of occupancy. Options were available to meet the setback requirements before the building was constructed and the applicant knew of the problems the moment the footings were in and did not attempt to correct it.

Board Member Jones commented that he looked upon the minutes as an expeditious way of getting information on the table. Board Member Vail recalled a similar situation that had arisen in the past. He was inclined to agree with Board Member Jones that this is often done expeditiously, but also agreed with Board Member Myers that a great deal was missing from these minutes that could have a bearing on litigation that might conceivably arise.

BOARD MEMBER VAIL MADE A MOTION THAT THE TAPE BE REVIEWED AND THE MINUTES BE AMPLIFIED AND SUBMITTED FOR THE BOARD'S APPROVAL AT ITS NEXT MEETING. VICE-CHAIR PERICA SECONDED THE MOTION, WHICH PASSED WITH A VOTE OF 6 (SIX) TO 1 (ONE), WITH BOARD MEMBER JONES DISSENTING.

3. **REGULAR AGENDA**

7-BA-2005, (Groman Variance), request for a Variance from Article V. Section 5.034.G.1 regarding wall heights in the front yard on a parcel located at 29695 North 75th Place.

Board Member Myers recused himself.

Randy Grant, Chief Planning Officer, presented the case. He said this was a request to locate a wall over 3 feet in height in the required front yard of a property located at the southwest corner of 76th Street and Dixileta Drive. The property was the subject of two lots splits in 1996 and 1997. One resulted in two lots, the other broke two lots into four. There were now five lots that were split without being processed as a subdivision plat.

Mr. Grant noted that the right-of-way on 76th Street is 80 feet wide. The City does not currently plan to make 76th Street more than a local collector street with a cross-section of 45 to 50 feet. The Applicant has asked City Council for an abandonment of 10 feet of the right-of-way as a way to lessen the amount of variance that would be needed.

He noted the presence of two washes on the property. The Groman property is 95,000 square feet in an R1-70 zoning district. He noted that the house was set farther back from the cul-de-sac than other houses in the area. Because of the wish to create attractive open streetscapes, the zoning ordinance requirement may seem to be somewhat restrictive. He reviewed the applicable zoning ordinance requirements and noted that this house has two front yards, one in front and one in back. He showed a slide illustrating the site constraints, the placement of the washes on the property and the required setback. The Applicant wants to create an outdoor space for a backyard area with a pool and other improvements. A 5-foot fence is required for security for the pool. The Applicant is requesting the security fence for the pool plus a privacy block wall. He noted that the Applicant will release Natural Area Open Space from its current location along the back of the property and rededicate this along the wash. Under today's ESLO ordinance, the wash is typically considered to be the most sensitive part of the site.

Mr. Grant commented that the shape and configuration of the lot creates a unique set of circumstances for the Applicant. Development standards were drawn up with rectangular lots in mind. It is unusual to find a property of this size that has so many constraints. The Applicant is not able to install a pool or backyard area unless the variance is granted. The majority of homes in the neighborhood have backyard pools. The circumstances were created by the way the house had been sited on the lot. The backyard is large, but cannot be used for the purposes that many homeowners would prefer. Mr. Grant added that the neighbors support this application and staff have not received any communication from anyone who opposes the application.

In summary, this property has unique circumstances that restrict the owner's ability to create a backyard space that is consistent with what other people in the district with these types of lots would have. Staff does not believe the variance is detrimental to people on other properties. The variance would allow for the relocation of NAOS to a location that would permanently preserve the most sensitive physical features of the site.

In the future an amendment to the zoning and subdivision ordinance might deal with these types of lots with double frontage. Until such an amendment is in place similarly constrained lots will occur. If the variance is granted, the owner may or may not proceed with the abandonment of 76th Street.

Mr. Grant examined the four different scenarios that could play out. He showed a slide of where the fence would be located in compliance with the ordinance, at a distance of 6 feet from the back of the house.

Another slide showed the fence location per ordinance with the abandonment only without the variance. This shifts the property line 10 feet into 76th Street.

If the abandonment were processed and the variance not granted, the setback would be 16 feet from the house.

A third slide showed the request without the abandonment. If the variance were granted with no abandonment the homeowner could build a wall within 15 feet of the property line.

A final slide showed the fence location with both the abandonment and the variance request. The wall would be 5 feet off the property line. The property line would be shifted so that there would be 15 feet from the new property line to the wall location. This would comply with the Foothills Overlay and ESLO ordinances and would give the applicant 61 feet of depth from the back of the house to the wall.

Vice-Chair Perica asked for confirmation about the City's plans not to develop 76th Street. Mr. Grant confirmed that it will not be a major street requiring an 80-foot right of way. Vice-Chair Perica remarked that if the variance were granted, and 76th Street were paved, there would be a block wall along that street. Mr. Grant clarified that it would be 45 feet from the center line.

The Applicant, Kevin Groman, addressed the Board, thanking them for the opportunity to speak. He gave a brief description of the current situation and his efforts to work with the City and neighborhood organizations to find an appropriate way to remedy the situation. He has been working on this for 19 months. Every neighbor he has spoken with has supported his family's wish to have a home with a backyard.

Mr. Groman outlined the special circumstances that exist, specifically the large setbacks and the washes. He showed photographs of the washes and plans for the outdoor space. He noted that the property to the south already has an abandonment, and compared the depth of other backyards in the neighborhood. Mr. Groman summed up by mentioning the special circumstances which were not self-created. The variance is necessary for the enjoyment of the property and the preservation of the owner's property rights. Neighbors have told him that his undeveloped backyard is having a negative impact on their property rights also. Finally, approval of the request would not negatively impact anyone. He had the full support of Dixileta Verde, his homeowners association. The Las Piedras homeowners association supported the application. He had talked with everyone in his neighborhood and shared his plans. The only concern expressed by neighbors is what would happen if the application is not approved, as it would have an impact on their property values.

Chairman Kuhstoss asked whether the Applicant had specifically spoken with the neighbors who face from the east. The Applicant said they had met with them on a couple of occasions and they were in agreement. He presented a document that neighbors had signed in support of the application.

Chairman Kuhstoss expressed great concerns regarding the proposed six-foot block wall. Mr. Groman explained that the neighbors had been fully apprised of his plans because he had shown them a rough drawing by his landscape designer. He was prepared to continue the matter in order to assure the Board of

the support in his immediate neighborhood. He stated that throughout the process he had taken steps to keep everyone involved of what was going on.

Board Member Goralski clarified that the house was 208 feet from the street. Mr. Groman said that all the measurements he quoted were in feet.

Vice-chair Perica requested clarification of the scenarios that had been presented. Mr. Grant explained that the Applicant is asking for the variance and might choose to record the abandonment that City Council has approved. This has been approved but not yet recorded.

Chairman Kuhstoss asked Mr. Grant to clarify that if the variance were granted there would still be a 45-foot distance between the road and the wall. Mr. Grant confirmed that this would be the case. He added that the applicant was amenable to undulating the wall so that it would not be a straight wall along the distance. Mr. Groman said that the plans show an undulating wall and it is his intention to keep to this plan.

Board Member Waldman commented that the Applicant's willingness to change the NAOS area in order to protect the wash was praiseworthy. He was inclined to support the variance.

Board Member Goralski commented that she would be supporting the variance, adding that the Applicant had prepared his case well.

Vice-Chair Perica agreed with the Board members and said she would support the variance. Board Member Vail concurred.

Board Member Jones said he would be supporting the variance.

Chairman Kuhstoss said she would support a motion to approve the plan, with the stipulation that it is built according to the plans that the Board had been shown at this meeting.

VICE-CHAIR PERICA MADE A MOTION TO SUPPORT THE VARIANCE FOR THE WALL AS PRESENTED ON CASE 7-BA-2005. BOARD MEMBER JONES SECONDED THE MOTION WHICH PASSED WITH A VOTE OF SIX (6) TO 0 (ZERO), WITH BOARD MEMBER MYERS RECUSING.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 6:52 P.M.

Respectfully submitted,
A-V Tronics, Inc.